

**REMARKS**

This is a response to the Office Action dated August 25, 2004.

**Summary of Office Action**

In the Office Action, Claims 1-3, 6, 10-11, and 13-18 were rejected under 35 U.S.C. 102(b) as being anticipated by Liu (U.S. Patent No. 6,641,544). The Examiner also rejected Claims 4, 5 and 12 under 35 U.S.C. 103(a) as being unpatentable over Liu. In particular, with respect to Claims 4 and 5, the Examiner indicated that the particular type of baby clothing, specifically, a sleep sack is only considered to be the preferred or optimum clothing. With respect to Claim 12, the Examiner indicated that making the conductive material of aluminum was a matter of obvious design choice and within the general skill of a worker in the art.

Additionally, Claims 7 and 8 were rejected under 35 U.S.C. 103(a) as being unpatentable over Liu in view of Sackner et al. (U.S. Patent No. 6,551,252) based on a contention that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Liu so as to have a pocket for positioning the display, as taught by Sackner et al., in order to avoid fastening the device and to allow the operator to quickly remove the display from the clothing if there is a need to do so. Claim 9 was also rejected under 35 U.S.C. 103(a) as being unpatentable over Liu and Sackner et al. as applied to Claims 7 and 8 above, and further in view of Mohrman (U.S. Patent No. 4,121,462) based on a contention that it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the sensor, disclosed by Liu and Sackner et al. with the probe, as taught by Mohrman, because both of them are alternate types of temperature measuring members which will perform the same function of sensing the temperature of the body.

Claims 18 and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Liu in view of Mohrman based on a contention that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display, disclosed by Liu, so as to illuminate only the selected temperature indication, as taught by Mohrman, in order to provide a better visual information and thus, improve accuracy of the device. Claim 19 was rejected under 35 U.S.C. 103(a) as being unpatentable over Liu in view of Ronci (U.S. Patent Application No. 2002/0097777) based on a contention that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display, disclosed by Liu, so as to

illuminate selected colors corresponding to measured temperature, as taught by Ronci, in order to provide better visual information and thus improve accuracy of the device.

In conclusion, the Examiner indicated that the prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. The Examiner also indicated that the prior art cited in the PTO-892 and not mentioned above disclosed related devices and methods.

**Applicants' Response**

In the Office Action, as stated above, Claim 1 was rejected under 35 U.S.C. 102(b) as being anticipated by Liu. In response, Applicants incorporate the subject matter of Claim 4 which was rejected under 35 U.S.C. 103(a) as being unpatentable over Liu into Claim 1. In particular, Claim 1 has been amended to recite the subject matter of a sleep sack by replacing the terms "clothing body" in Claim 1 with the terms "sleep sack" of Claim 4. Accordingly, Applicants respectfully submit that the disclosure of Liu does not disclose all of the limitations as recited in amended Claim 1.

Further, Applicants respectfully submit that amended Claim 1 is non obvious over Liu which was the reference the Examiner relied upon to reject Claim 4 under 35 USC § 103(a). The Examiner also cited In re Boesch in support of the Examiner's contention that a sleep sack (i.e., subject matter of Claim 4) is a narrower range of a broader range of clothing body (i.e., recited in original Claim 1). In response, Applicants respectfully directs the Examiner's attention to In re Boesch, 205 USPQ 215, 219 (CCPA 1980) wherein the court held that a prima facie case of obviousness was established based on a contention that the prior art would have suggested the kind of experimentation necessary to achieve the claimed composition. The focus is on whether the prior art suggests the type of experimentation or optimization necessary to achieve the claimed invention.

The Examiner also argued in the Office Action that a sleep sack is a preferred or optimum clothing body. However, Applicants respectfully submit that Liu (i.e., the prior art) does not suggest that a sleep sack is an optimum clothing body with respect to the claimed invention. In support thereof, Applicants respectfully directs the Examiner's attention to Fig. 5 of Liu. As shown therein, the temperature measuring member is engaged to a body of the baby and the temperature displaying member is engaged to the clothing body wherein they are in

electrical communication via cable 33 which protrudes or proceeds through an opening formed by upper and lower buttons. It is important that the temperature measuring member be on an opposing side of the baby's body compared to the temperature displaying member based on a view that if both the temperature measuring member and the temperature displaying member were both on either the left or right sides of the baby's body, then the cable would tend to wrinkle or collapse an edge of the opening formed by the upper and lower buttons thereby creating a bigger air gap to possibly allow cold air to pass into the clothing body cavity and cool the baby. This may detract from the overall purpose of the clothing body, namely, keeping the baby warm. Accordingly, Liu would not teach experimenting with a type of clothing body which would tend to wrinkle or collapse an edge and create a bigger air gap to allow cold air to pass into the clothing body cavity by attaching the temperature displaying member to the clothing body and attaching the temperature measuring member to the baby's body.

Claim 1 now recites a sleep sack (i.e., subject matter of original Claim 4). Liu does not suggest experimenting with a sleep sack to achieve the claimed invention, namely, a body temperature device engaged to a sleep sack based on a view that to do so would create a bigger air gap in the sleep sack. In particular, if the baby shown in Fig. 5 of Liu was placed within a sleep sack and the body temperature device was engaged as shown<sup>1</sup>, then the cable must proceed through either the neck aperture, left arm aperture or the right arm aperture thereby wrinkling or collapsing an edge of such aperture. This may create a bigger air gap, reduce the effective warmth of the sleep sack and cause discomfort to the baby. Hence, a body temperature device engaged to a sleep sack may render the sleep sack unsatisfactory for its intended purpose, namely, providing warmth to the baby. Hence, Liu would not teach experimenting with a sleep sack engaged to a body temperature device. Moreover, for the same reasons discussed above, there is no motivation to modify the teachings of Liu so as to combine the body temperature device and a sleep sack. Accordingly, Applicants respectfully submit that Claim 1 as well as its dependent Claims 2 and 6-20 are in condition for allowance.

Claim 14 was rejected under 35 U.S.C. 102(b) as being anticipated by Liu based on a contention that the temperature measuring member and the temperature displaying member are stackable upon each other depending on the positioning of the baby and the operator relative to

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<sup>1</sup> In other words, the temperature displaying member engaged to the clothing body adjacent the baby's right chest and the temperature measuring member engaged to the left chest of the baby.

the baby. In response, the stacked subject matter has now been amended to recite that the temperature displaying member is fixedly stacked upon the temperature measuring member and to incorporate the subject matter of its independent base Claim 1.<sup>2</sup> In this regard, Applicants respectfully submit that the subject matter of the temperature displaying member being fixedly stacked upon the temperature measuring member is not disclosed in Liu. Rather, Liu appears to disclose a randomly stacked temperature displaying member upon a temperature measuring member.<sup>3</sup> In support thereof, Applicants respectfully direct the Examiner's attention to the Office Action, page 3 which recites that the stacking occurs "depending" on the positioning of the baby. Since babies are prone to move and not remain stationary, it is understood that although the temperature displaying member may initially be stacked upon the temperature measuring member based on the position of the baby, when the baby moves or alters its position, the temperature displaying member may no longer be stacked upon the temperature measuring member.<sup>4</sup> As such, Applicants respectfully submit that Liu does not disclose the subject matter of the temperature displaying member being fixedly stacked upon the temperature measuring member.

Furthermore, there is no motivation to modify the teachings of Liu such that the temperature displaying member is fixedly attached to the temperature measuring member. In particular, the temperature displaying member is in communication with the temperature measuring member via a flexible cable 33. The physical relative positions of the temperature displaying member and the temperature measuring member is dependent upon the flexibility of the clothing body and cable 33 and the fit of the clothing body onto the baby. Also, the cable, the flexibility of the clothing body and the fit between the clothing body and the baby are all loose, flexible or otherwise free flowing which provides the baby with a comfortable clothing body with an added functionality of a body temperature device. To fixedly stack the temperature displaying member upon the temperature measuring member, at least one of the three factors

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<sup>2</sup> The intervening claims of original Claim 14, namely, Claims 10 and 13 have not been incorporated into now amended independent Claim 14.

<sup>3</sup> Applicants do not concede that Liu even discloses a temperature displaying member stacked on a temperature measuring member but makes the arguments presented in this response assuming arguendo that Liu does disclose such subject matter.

<sup>4</sup> Applicants do not argue that the temperature displaying member is permanently attached to the temperature measuring member although such subject matter is encompassed by the terms "fixedly stacked". Accordingly, Applicants maintain that the term fixedly includes but is not limited to the concept of selectively stacking or permanently stacking.

named above must be made relatively immovable. For example, the temperature displaying member may be fixedly stacked upon the temperature measuring member if the cable 33 were fabricated from a rigid rod such that the stacked relationship between the temperature displaying member and the temperature measuring member may be maintained despite the position of the baby. However, in making such modification (i.e., rigid rod), the reel 81 of the Liu may be made inoperable for its intended use, specifically, retraction and extension of the cable 33. In other words, if the cable was modified to be a rigid rod then the reel 81 would be incapable of realeasably winding<sup>5</sup> the rigid rod therein. There is also no motivation to modify the clothing body of Liu so as to be rigid based on a contention that a rigid clothing body would be unacceptably uncomfortable for the baby. Also, there is no motivation to modify the fit of the clothing body onto the baby so as to be a close fit. Accordingly, Applicants respectfully submit that the disclosure of Liu does not disclose, suggest or make obvious the invention recited in the Claim 14. Hence, Claim 14 is believed to be in condition for allowance.

By this Amendment, Applicants respectfully request entry of new Claims 21-27. Newly added independent Claim 21 recites substantially the same subject matter as original Claim 1 but further adds that the clothing body has an aperture sized and configured to receive only the body temperature device therethrough. The aperture disclosed in Liu is not sized and configured to receive only the body temperature device through the aperture. The aperture disclosed in Liu is large enough to also receive a hand or other object.

Moreover, there is no motivation to modify the disclosure of Liu such that the aperture disclosed therein is sized and configured to receive only the body temperature device through the aperture. In support thereof, Applicants respectfully direct the Examiner's attention to Fig. 5 which illustrate that the aperture is formed by an upper button and a lower button. To modify the aperture of Liu such that it is sized and configured to receive only the body temperature device therethrough, the upper button and the lower button must be positioned in abutting or near abutting contact with each other so as to allow only a small space therebetween. Since there is no motivation or teaching to modify only two buttons (i.e., upper button and lower button) as discussed above, the balance of the buttons should also be formed in abutting or near abutting contact with each other along the entire front side of the baby's clothing body. Since this

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<sup>5</sup> U.S. Patent No. 6,641,544, col. 2, lns. 41-43.

modification would result in a numerous number of buttons along the clothing body front side which would make the disengagement/engagement of the buttons impracticable, there is no motivation to modify the disclosure of Liu such that the aperture is sized and configured to receive only the body temperature device therethrough. Hence, Applicants respectfully submit that new independent Claim 21 is not disclosed, suggested or obvious in view of the disclosure of Liu and that Claim 21 and its dependent Claims 22-25 are in condition for allowance.

New independent Claim 26 recites substantially the same subject matter as original Claim 1 but further adds the limitation that the body temperature device engages an aperture outer perimeter. The disclosure of Liu does not disclose a body temperature device engaged to an aperture outer perimeter. In support thereof, Applicants respectfully direct the Examiner's attention to Fig. 5 which illustrate that the body temperature device is engaged to a right chest portion of the clothing body and the left chest of the baby.

Moreover, there is no motivation to modify the disclosure of Liu such that the body temperature device engages the aperture outer perimeter based on a contention that to do so may render the body temperature device inoperable for its intended use. In particular, if the body temperature device was engaged to the aperture outer perimeter, then based on position of the baby, the body temperature device, more specifically, its temperature displaying member may slip into the inner cavity of the clothing body due to its large size so as to make the temperature displaying member not visible to a user. As such, Applicants respectfully submit that the disclosure of Liu does not disclose, suggest or make obvious the invention recited in Claim 26. Hence, Applicants respectfully submit that Claim 26 and its dependent Claim 27 are in condition for allowance.

In the Office Action, the Examiner objected to Claim 10 based on a contention that "the baby's body" lacked antecedent basis. Applicants have amended the term "the" with the term "a". Accordingly, Applicants respectfully submit that such amendment overcomes the Examiner's objection.

Applicants acknowledge receipt of the prior art made of record and not relied upon, but considered by the Office Action to be pertinent to Applicants disclosure. It is Applicants belief that the cited art, either alone or in combination, do not anticipate, suggest, or make obvious the instantly claimed invention.

**Conclusion**

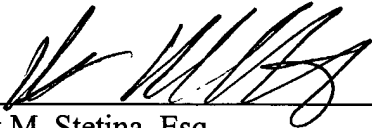
For the foregoing reasons, Applicants respectfully submit that all the stated grounds of rejections and objection have been overcome, and that Claims 1, 2, and 5-27 are in condition for allowance. An early notice of allowance is therefore respectfully requested. Should the Examiner have suggestions for expediting allowance of the application, the Examiner is invited to contact the Applicants representative at the number listed below.

If any additional fee is required, please charge Deposit Account Number 19-4330.

Respectfully submitted,

Date: 11/1/04

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